

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Comments Regarding)	
Auction No. 35 Licensing)	WT Docket 02-276
)	
)	

COMMENTS OF ALPINE PCS, INC.

Alpine PCS, Inc. (“Alpine”) by its attorneys, hereby submits its comments in response to the Commission’s public notice of September 12, 2002 (the “Public Notice”).¹

As set forth below, Alpine submits that the Commission should grant to Auction No. 35 applicants that were high bidders for any NextWave licenses the relief contemplated in the Public Notice. The Commission should also discount the winning bids by a sufficient amount to bring their price into line with today’s market. Lastly, as the severe problems that permeate nation’s economic climate, and the wireless industry, affect all licensees who acquired their spectrum through auctions, discounts should be applied to all such licensees and not only those who participated in Auction No. 35.

I. INTRODUCTION

Alpine has been a Commission authorized wireless licensee for well over a decade. It holds numerous cellular and PCS licenses. Its PCS licenses were acquired via auctions conducted prior to Auction No. 35, and Alpine is an acknowledged bona fide very small business and Designated Entity.

The dire state of the telecom industry is so far beyond question that no discussion of it is here necessary. The Chairman has recognized it, both in testimony before Congress and in

¹ Public Notice, FCC 02-248, WT Docket No. 02-276, September 12, 2002.

speeches to the financial community.² The Public Notice acknowledged it.³ The foremost wireless trade association has acknowledged it.⁴ And the largest bidder in Auction No. 35 has recognized it.⁵

II. DISCUSSION

There can be no doubt about one matter: the best reason for the Commission to consider voiding the Auction No. 35 results, in whole or in part, is the extreme downturn in the industry, and in the entire economy. The Chairman's comments referenced above, as well as statements included in the Public Notice, prove this. Relief is both warranted and in the public interest. Without relief, the wireless industry will likely remain stagnant and overly burdened by debt.

All applicants and licensees having outstanding obligations to the Commission have been disadvantaged by the industry's downturn, and all should be entitled to the same relief.

Admittedly, no two auctions are identical. But it is not necessary for auctions to be identical in every way in order for participants in them to be entitled to equal treatment. Rather, all that is necessary is that there not be any "relevance of those differences to the purposes of the Communications Act." *Melody Music v. FCC* 345 F2d 730, 733 (1965).

There is another reason that relief provided to Auction No. 35 applicants should extend to all other broadband PCS licensees having outstanding financial obligations to the Commission:

² See Written statement of Michael K. Powell, Chairman, Federal Communications Commission on "Financial Turmoil in the Telecommunications Marketplace: Maintaining the Operation of Essential Communications", before the Committee on Commerce, Science, and Transportation, United States Senate, July 30, 2002, 6-7.

³ Public Notice at 3.

⁴ See also, Letter of August 13, 2002, from Thomas E. Wheeler, President and CEO of CTIA, to Chairman Powell, requesting that the Commission "dismiss" the pending applications of Auction No. 35's high bidders.

⁵ See "The Economic Benefits of Permitting Winning Bidders to Opt Out of Auction 35", J. Gregory Sidak, August 26, 2002; See also Correspondence of August 15, 2002, addressed to Chairman Powell and signed by fourteen economic academicians and consultants, including Mr. Sidak, urging the same relief.

the manner in which the Commission treats certain PCS applicants and licensees unquestionably impacts on other applicants and licensees. Undoing potential obligations for some licensees sends a signal regarding the worth of the associated licenses. To the extent that one class of license is viewed as being in need of assistance, others usually are perceived in the same light. Thus, granting relief to some but not all licensees could well have a negative impact on the license values of those who obtain no assistance.

For all of the foregoing reasons, Alpine submits that the Commission should permit Auction No. 35 applicants the option of voiding their Auction No. 35 obligations. If they elect not to void them, they should be able to acquire them at a discounted price. Whatever is done for Auction No. 35 applicants, the same treatment should be made available for other PCS licensees that remain indebted to the Commission.

Respectfully submitted,

BLACK CROW WIRELESS, L.P.

/s/ Gerry McGowan
Gerry McGowan

Its Attorney

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, NW, Suite 1200
Washington, DC 20036
202/857-3500

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